



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
NOVEMBER 6, 2007
(Approved as amended 3/4/08)**

PRESENT: David Ruoff, Chairman; Forrest Esenwine; June Purington; Elwood Stagakis, Alternate; Malcolm Wright, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Chris Rand; Karen McKinley, Attorney; Harper Marshall; Bill Stafford; Frank Campana; Neal Kurk; Ginger Esenwine.

I. INTRODUCTION:

Chairman David Ruoff called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Chairman Ruoff appointed Malcolm Wright and Elwood Stagakis as a voting member for tonight's meeting. Chairman Ruoff explained to those present the way by which the board conducts business.

II. ADMINISTRATIVE ITEMS:

There were no administrative items for this evening and the board went right to the hearings.

III. PUBLIC HEARINGS:

Case #2107 Granite State Telephone
Administrative Appeal, Article 34, Section 4.1
Variance, Articles 24.9.1 & 34.4.1
Special Exception, Article 24.9
Applicant is appealing the order from the Code Enforcement Officer to have the sign removed as well as applying for a variance and special exception to permit a pre-existing sign to remain on the property.
Tax Map 411-106 South Stark Highway

Chris Rand, Granite State Telephone and Karen McGinley, Attorney was present. Mr. Rand stated that they have three approaches this evening. He is going to handle the appeal and Ms. McGinley will handle the variance and special exception if necessary. Mr. Rand stated that they began this process about one year ago. They are a small company and were looking for ways to compete with

larger companies, Comcast, Verizon, etc. So they felt that they would erect a sign on their property across the street from the main office. They have 18.5 acres across from the main office. They approached the building inspector with the idea and got a verbal approval. They selected the site as it was across and it would not create any confusion. They went through the formal process and received a permit in February of 2007. They then hired a company to install the sign and by surprise they received a cease and desist on July 5, 2007 to have the sign removed.

Forrest Esenwine stated that he may be dense and not able to find it, but would you explain where the supposed error is and the reason for coming back and having to remove it. What part of the sign is in violation of the ordinance? Karen McGinley stated that it is not in violation as the permit was issued in February of 2007 and article 34 didn't pass until March of 2007.

Elwood Stagakis stated that if you were to sell the land it would go with the land. Ms. McGinley stated that they are addressing the administrative appeal now and that could be addressed in the variance.

The board read through RSA 676:12 and felt that the building permit should not have been issued.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: Neal Kurk, Mt. Dearborn Road stated that he was the person that went to Mr. Meany after he saw it go up. It is against the ordinance Article 34 that was passed because there is no business allowed on the vacant lot. In terms of the timing, Mr. Meany made a mistake because he probably felt the old ordinance was in effect, but pursuant to RSA 676:12 the building permit should have not have been issued.

Other Boards: NONE

Chairman Ruoff closed this hearing to the public at 8:15 PM.

Karen McGinley stated that they are a public utility looking to advertise the internet service. The sign was installed with the Town's permission. Mr. Rand stated that they worked through a third party so he doesn't have the actual date of when they came in and applied for the permit.

Ms. McKinley stated that she does not disagree with the understanding of the reading of RSA 676:12.

Board Discussion: Chairman Ruoff stated that he felt it is the applicant's burden to prove they filed for the building permit 120 days prior to the March 2007 vote in which Article 34 was adopted.

June Purington moved to grant the administrative appeal as requested; Elwood Stagakis seconded the motion. Vote: 0 in favor and 5 opposed (Wright, Purington, Ruoff, Esenwine and Stagakis).

Ms. McGinley then asked a procedural question as to which one should be handled first the variance or the special exception. Chairman Ruoff stated that his interpretation is that you need permission to put the sign there. So, in order to succeed you would have to get a variance under 34.4.1 and if approved it would need to get the special exception. Ms. McGinley stated that she agreed, but just wanted clarification from the board. Ms. McGinley then addressed the variance request. They are requesting a variance to the terms of Article 24.9.1 and Article 34.4.1 and ask that said terms be waived to permit a pre-existing sign to remain on the property. The property in question is located on South Stark Highway, within the Weare Commercial District, and identified by the Weare Assessor's Office as Tax Map 411, Lot 106 (the "Property"). The property is currently undeveloped with a 64 square foot sign (the "Sign"). The sign is located on the southern side of South Stark Highway, opposite the Granite State Telephone facility located at 600 South Stark Highway. On or about February 13, 2007, the Weare Building Department granted Granite State Telephone (the "Applicant") Building Permit #SG02-59-07 (the "Permit") to install the sign on the property. Relying on the permit, the applicant spent significant expense to install the sign in the beginning of June of 2007, after the ground on the property had sufficiently thawed. The applicant installed the sign in accordance with the permit and conceptual rendering provided with the permit. On July 5, 2007, several weeks after the installation of the sign, the applicant received a cease and desist order from Charles F. Meany, III, the Weare Code Enforcement Officer, indicating that the permit was issued in error and ordering the applicant to remove the sign (the "Order"). Then Ms. McGinley addressed the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: The value of the surrounding properties will not be diminished if the variance is granted because the Sign is consistent with signage generally allowed in the Commercial District. In addition, the sign is buffered from the abutters by natural trees and shrubs. Not only is the type of sign allowed in the Commercial District, it is prevalent along South Stark Highway. Signs of this type are intended within the Commercial District and the Sign itself is consistent with the other signs along South Stark Highway. It does not change the character of the area nor does it create a hindrance to public safety. Therefore, granting the variance will not diminish surrounding property values.
2. That the granting of the variance **will not** be contrary to the public interest because: As the New Hampshire Supreme Court indicated in its recent decision, Malachy Glen Associates, Inc. v. City of Chichester (New Hampshire Supreme Court, issued March 20, 2007), the requirement that a variance not be contrary to the public interest is related to the requirement

that it be consistent with the spirit of the ordinance. The Court noted two approaches to determine if a variance is contrary to the public interest, (1) if it would alter the essential character of the locality, or (2) if it would threaten the public health, safety or welfare. Granting this variance will not alter the essential character of the neighborhood because the Sign would otherwise be permitted were it not for the lack of a building on the Property. Articles 24, Section 24.9.1 and the WZO allow signs on any one lot in the Commercial District that contains a related business or establishment. The Property is held by the applicant for business use, but the Sign is not permitted under the WZO. However, the Sign otherwise meets the requirements for signs in the Commercial District, its area does not exceed 64 square feet and its height is less than 15 feet. Signs of this type are permitted in the Commercial District and are generally present along South Stark Highway. Thus, granting the variance to allow the Sign to remain on the Property will not impact the essential character of the neighborhood because the Sign already matches the commercial character of the district.

3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: The zoning restriction, allowing signs only on properties with a related business or establishment is unreasonable considering the nature of the Property and the surrounding area. Again, the Property is being held by the applicant for business purposes. The area is zoned for commercial use. Such use includes the erection of signs related to a property owner's business. The Applicant owns the Property as well as the property directly across South Stark Highway from the sign, where it operates Granite State Telephone. The existing Sign is directly related to the operation of Granite State Telephone but is not permitted solely because the Applicant has not built a structure on the Property. This is not the case of a property owner attempting to erect an unrelated billboard; it is an otherwise permitted sign that is directly related to the operation of a business on the adjacent property of the same owner. Given that the Property is located in the Commercial District, and that the Sign is directly related to operations at the contiguously co-owned property and is being held for business use, it is unreasonable to prohibit the Sign simply because the Property has not been developed with a structure.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: There is no fair and

substantial relationship between general purposes of the zoning ordinance and the sign restriction. The purpose of the Commercial Zoning District is to promote commercial endeavors. Conversely, the sign restriction, as applied to the Sign, restricts commercial development within the district except as in relation to a pre-existing structure. The Sign, as presently situated on the Property, allows the Applicant to continue commercial development of the Property and its adjacent properties without undergoing unnecessary development of the Property. Further, the location of the Sign on the property, a less developed area, ensures that it does not create visual clutter along the north side of South Stark Highway, nor create a hindrance to passing motorists. Allowing the Sign to remain on the Property, within the Commercial District and among signs of a similar nature, is consistent with the general purposes of the WZO. Consequently, no fair and substantial relationship exists between the general purposes of the zoning ordinances and the specific restriction on the property.

- c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: The variance will not injure the public or private rights of others because it will merely allow the Applicant to keep in place a sign of the type which is generally permitted in the Commercial District. The Sign fits the commercial aesthetic of the surrounding properties. Its location on the Property, in a less developed area, ensures that it will not increase visual clutter along the north side of South Stark Highway and will not create a hindrance to passing motorists. Consequently, the literal enforcement of the WZO will result in unnecessary hardship.
4. That through the granting of relief by the variance substantial justice will be done because: Substantial justice will be done by granting the variance because it will allow the Applicant to continue to develop its properties in a manner consistent with its commercial needs. Consistent with the purpose of the Commercial District, the Applicant has developed its properties, including the Property, with the expectation that they could be grown at rates consistent with the needs of the business. Accordingly, the applicant invested in the Sign only after obtaining the Permit and in reliance on the validity of the permit. Given this expectation and the general purpose to promote commercial development in the Commercial District, substantial justice will be achieved by granting this variance.
 5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The stated purpose of the Commercial

Zoning District is to encourage the diversification of the Town's economic base by promoting commercial endeavors. Allowing the Sign to remain on the Property is consistent with the purpose of promoting commercial endeavors within Weare and consistent with the business purpose for which the Property is being held. As noted previously, the sign is consistent with the commercial nature of the area and is not placed in such a way as to be a hazard to motorists. The Property is owned by a business and held for business purposes. The Applicant owns and operates offices for Granite State Telephone at 600 South Stark Highway, directly across the road from the Sign. While there is no building directly on the Property, it is being held for business purposes and the sign is clearly affiliated with the adjacent Granite State Telephone facility property. The Sign is an extension of the commercial use at 600 South Stark Highway. Further its location in a less developed area ensures that it will not increase visual clutter along the north side of South Stark Highway, nor create a hindrance to passing motorists. Thus, the Sign is consistent with the stated purpose of Commercial Zoning District and the existing commercial use within that district.

Chairman Ruoff asked why it got put on that side of the road. Mr. Rand stated that on the right hand side they have a fence on the ROW. On the left hand side it is just trees, no modification to the land around it. It was simple, doesn't draw a huge amount of attention. It was let people know who they are and the business. It wouldn't have looked nice on the same side as the office.

Malcolm Wright asked if it was in the State's Right of Way. Mr. Rand responded that it was and they had to move it four feet out of the Right of Way.

Elwood Stagakis stated that he didn't understand it and he didn't think it was an attractive sign.

Forrest Esenwine stated that since it was brought up, you stated that you wanted to get your name out. He went past the sign and didn't realize it was Granite State Telephone and going by at 45 MPH doesn't give you a lot of time to look. The point is the sign didn't do it; Mr. Esenwine personally thinks it is a bad sign, because some people don't understand it.

Chairman Ruoff reminded the board that we can't get into sign content regulation.

Approving Abutters: NONE
Disapproving Abutters: NONE
Other Boards: NONE

Public At Large: Neal Kurk, Mt. Dearborn Road, he stated that he would like to suggest that the applicant has not met its burden in their favor. The ordinance was designed to balance the interest of business with the interest to balance the rural

character of the town. The balance was not the size but the number of signs for any business. To try to reduce the number of signs this was the balance to have to relate to the business of the owner of the property, occurring on the property.

Rebuttal of Applicant: Ms. McGinley asked to add one last thing that Mr. Kurk said with regard to being able to grant the variance with conditions and she doesn't agree with Mr. Kurk's interpretation. The condition that she is suggesting would not open this up to other requests. They have a business across the street that this business owns and they would like to advertise for.

Chairman Ruoff closed this hearing at 8:50 PM.

Board Discussion: Chairman Ruoff stated that the board can't consider what was brought up regarding the sign content or the looks of it. Chairman Ruoff stated that the comments about other businesses or buildings should not be considered, they are hypothetical and we can't rule on some other business that in the future might own it. His personal opinion is that the zoning restriction has potential for something more to happen there.

Elwood Stagakis stated that in one sentence you eliminate speculation but in the other give your own. He felt that he would agree with any sign unrelated to a business; this sign is related. He feels they have demonstrated it relates to the business.

Malcolm Wright stated that he doesn't have a problem with it. June Purington stated that she has a problem with the fact that the Town created the problem for them. They operated in good faith and we made the mistake. Mr. Esenwine agreed.

Mr. Esenwine stated that he didn't think they are arguing the point that this is the only thing they can put on the property. As Ms. Purington stated, getting back to the fact that they were told it was ok and were issued the permit, and after the fact are told they have to take it down. No matter how financially stable the business is, we as a Town are taking away or forcing a loss on their investment that was not their fault.

Case Decision: Point #1: June Purington moved to accept point #1; Forrest Esenwine seconded the motion. Discussion: Mr. Esenwine stated that it would be a pretty hard stretch that it would diminish the surrounding values. Vote: 5 in favor (Wright, Purington, Ruoff, Esenwine and Stagakis). Point #2: June Purington moved to accept point #2; Elwood Stagakis seconded the motion. Discussion: Mr. Esenwine stated that the public interest in this case, the only relationship is billboard signage; would this be contrary to the public interest. He didn't see where it was the case. Vote: 4 in favor (Wright, Purington, Esenwine and Stagakis) and 1 opposed (Ruoff). Point #3a: Forrest Esenwine moved to accept point #3; June Purington seconded the motion. Discussion: none. Vote:

2 in favor (Purington and Stagakis) and 3 opposed (Wright, Ruoff and Esenwine). Point #3b: June Purington moved to accept point #3b; Forrest Esenwine seconded the motion. Discussion: none. Vote: 2 in favor (Purington and Stagakis) and 3 opposed (Wright, Ruoff and Esenwine). Point #3c: June Purington moved to accept point #3c; Elwood Stagakis seconded the motion. Discussion: none. Vote: 3 in favor (Purington, Esenwine and Stagakis) and 2 opposed (Wright and Ruoff). Point #4: June Purington moved to accept point #4; Elwood Stagakis seconded the motion. Discussion: none. Vote: 3 in favor (Purington, Esenwine and Stagakis) and 2 opposed (Wright and Ruoff). Point #5: June Purington moved to accept point #5; Elwood Stagakis seconded the motion. Discussion: none. Vote: 2 in favor (Purington and Stagakis) and 3 opposed (Wright, Ruoff and Esenwine). Forrest Esenwine moved to grant the variance for Case #2107, June Purington seconded the motion. Discussion: Mr. Esenwine stated that pursuant to State Statutes all 5 (five) points need to be approved in order to be granted the variance. Vote: 2 in favor (Purington and Stagakis) and 3 opposed (Wright, Ruoff and Esenwine).

Chairman Ruoff stated that by denying the variance makes the special exception application moot.

IV: OTHER BUSINESS:

OCTOBER 2, 2007 MINUTES: Forrest Esenwine moved to accept the October 2, 2007 minutes as amended; June Purington, seconded the motion, all in favor.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 9:10 PM; June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator